

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 2000-01

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-170-99

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

**For Filing Administrative
Regulations**

For Emergency
Regulations Only

Effective Date

Expiration Date

Governor's Signature

State Environmental Commission

Classification ☐ Proposed ☐ Adopted By Agency ☒ Temporary ☐ Emergency ☐

Brief description of action: Petition 2000-01 (LCB R-170-99) permanently regulation amends NAC 444.842 to 444.960, the hazardous waste regulations. NAC 444.8427, 444.84275, 444.850 and 444.9452 were amended to reference federal regulations as they existed on July 1, 1999. NAC 444.8632 is amended to adopt 40 CFR Parts 2, Subpart A, 124, Subparts A & B, Parts 260 to 270 and Part 279 as those parts existed on July 6, 1999. The references to the federal regulations provides for the use of enforceable documents in lieu of post-closure permits, allows releases from certain regulated units to be addressed through the corrective action program and creation of a special permit called a Remedial Action Plan for remediation wastes. The hazardous waste fee requirements in NAC 444.8452 are clarified.

Authority citation other than 233B: NRS 459.485, 459.500 and 459.510

Notice date: November 16, 1999, November 17, 1999, November 24, 1999 and December 2, 1999

Hearing date: December 16, 1999

Date of Adoption of Agency: December 16, 1999

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PERMANENT PETITION 2000-01 (R-170-99)
STATE ENVIRONMENTAL COMMISSION**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 444. This permanent regulation deals with amendments to the hazardous waste program.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 2000-01 (R-170-99), was noticed four (4) times: November 16, November 17, November 24 and December 2, 1999 as a permanent regulation in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. Regulatory workshops were held on September 21 and 22, 1999 in Carson City and Las Vegas. The regulation was adopted by the State Environmental Commission on December 16, 1999. No testimony was received regarding this permanent regulation. No written comments were received for this permanent regulation. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

(a)	Attended each hearing;	44
(b)	Testified at each hearing:	0
(c)	Submitted to the agency written comments:	0

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates of the public notices. No oral testimony was received that opposed or supported the permanent regulation. No written testimony was received relating to the permanent regulation. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted by the State Environmental Commission on December 16, 1999 without any requested changes for amendments.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

The permanent regulation is not anticipated to have any significant adverse short or long term economic impact on Nevada businesses. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The adopted regulation should make it easier for affected businesses to comply by simplifying the requirements regarding hazardous waste.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulations do not overlap or duplicate any regulations of another state or local governmental agency. The amendments make the Nevada hazardous waste regulations consistent and current with the federal hazardous waste rules.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The regulations are no more stringent than federal regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There will be no additional fees, nor will there be an increase in fees associated with this regulation.

END OF FILING STATEMENT FOR 2000-01 (R-170-99)

**FILED REGULATION OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION
LCB File No. R170-99**

Effective January 26, 2000

EXPLANATION - Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

Authority: §§1-12, NRS 459.485, 459.500 and 459.510.

Section 1. NAC 444.8427 is hereby amended to read as follows:

444.8427 "Facility for community recycling" means a facility for recycling hazardous waste which has a yearly capacity that is not more than twice the amount of the type of hazardous waste proposed to be recycled that is generated within the region in this state in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July ~~1, 1998.~~ **6, 1999.**

Sec. 2. NAC 444.84275 is hereby amended to read as follows:

444.84275 "Facility for community storage" means a facility for the storage and consolidation of hazardous waste which has a yearly capacity that is not more than twice the amount of hazardous waste that is generated within the county in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July ~~1, 1998.~~ **6, 1999.**

Sec. 3. NAC 444.843 is hereby amended to read as follows:

444.843 1. "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

2. The term includes any:

(a) Hazardous waste or constituent of hazardous waste which is subject to regulation under 40 C.F.R. Part 261;

(b) ~~[Mixture of wastes from commercial chemical products identified in 40 C.F.R. Part 261.33, which have been discarded or are intended to be discarded, if at least 10 percent of the mixture, by volume, is composed of one or more of its active ingredients;~~

~~(e)~~ Waste containing polychlorinated biphenyl; and

~~(d)~~ (c) Waste brought into this state which is designated as hazardous waste in the state of its origin.

Sec. 4. NAC 444.8452 is hereby amended to read as follows:

444.8452 1. The owner or operator of a facility for the management of hazardous waste shall, in addition to any other applicable fees, pay the following fees to the division to offset partially the cost of inspection and other regulation of the facility:

(a) ~~{Except as otherwise provided in paragraph (d), for}~~ *For the disposal, open burn, open detonation or incineration ~~{, including}~~ of hazardous waste by a unit or for the burning of hazardous waste in a boiler or industrial furnace for the recovery of energy ~~{in boilers or industrial furnaces, of waste that is hazardous waste as described in paragraph (a) or (b) of subsection 2 of NAC 444.843, \$18.50}~~ by a facility:*

(1) Eighteen dollars and fifty cents per ton of the volume ~~{received by the facility}~~.

~~(b) Except as otherwise provided in paragraph (d), for the disposal of waste brought into this state that is hazardous waste as described in paragraph (c) or (d) of subsection 2 of NAC 444.843, but that is not otherwise designated as hazardous waste in accordance with 40 C.F.R. Part 261, \$3, per ton of the volume received by the facility.~~

~~(c) that is hazardous waste pursuant to paragraph (a) of subsection 2 of NAC 444.843; and~~

(2) Three dollars per ton of the volume that is hazardous waste pursuant to paragraph (b) or (c) of subsection 2 of NAC 444.843 but is not hazardous waste pursuant to paragraph (a) of that subsection.

(b) For the treatment or storage of a volume of hazardous waste by a unit without ~~{subsequent}~~:

(1) Subsequent disposal, open burn, open detonation or incineration of the hazardous waste by the facility ~~{,}~~; or

(2) Subsequent burning of the hazardous waste in a boiler or industrial furnace for the recovery of energy by the facility,

\$5 per ton, ~~{of the volume received by the facility,}~~ not to exceed a maximum fee of \$10,000 per calendar year if the waste that is stored or treated ~~{or stored}~~ is waste generated at that facility.

~~{(d)}~~ *(c) For the treatment ~~{and subsequent disposal}~~ of a volume of hazardous waste ~~{that is treated}~~ by a unit so that it is ~~{not}~~ no longer hazardous waste pursuant to NAC 444.843 ~~{,}~~ and subsequent disposal of the treated waste by the facility, \$3 per ton. ~~{of the volume received by the facility.}~~*

2. The owner or operator of such a facility shall:

(a) Calculate the amount of hazardous waste subject to the fees on a quarterly basis ~~{,}~~ *based on the volume of hazardous waste that is newly managed by a unit during the quarter of the year for which the fees are calculated;*

(b) Pay the fees provided in this section ~~{, based on the volume of hazardous waste received by the facility during each quarter of the calendar year,}~~ within 30 days after the end of each quarter; and

(c) Submit, with each payment, a detailed accounting of the volume of waste, which corresponds to the fee paid.

3. The division may assess a penalty of 2 percent of the unpaid balance for each month, or portion thereof, that a fee remains unpaid.

4. The division may waive any part of the fees specified in subsection 1 for waste brought to a state-owned facility if the waste is generated:

(a) By an agency of this state; or

(b) In compliance with an order issued by the division to clean up a spill or deposit.

5. As used in this section ~~{, "owner"~~:

(a) "Owner or operator of a facility for the management of hazardous waste" means a person who:

~~{(a)}~~ *(1) Qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G; or*

~~{(b)}~~ *(2) Has been issued a permit pursuant to 40 C.F.R. Part 124, Subparts A and B, and Part 270, Subparts A to F, inclusive.*

(b) "Unit" means a unit for the management of hazardous waste that is:

- (1) Operated by a facility for the management of hazardous waste; and**
(2) Subject to the permitting requirements of 40 C.F.R. Part 270.

Sec. 5. NAC 444.8454 is hereby amended to read as follows:

444.8454 The division shall deposit the fees and penalties it collects pursuant to NAC 444.8446 to 444.8452, inclusive, with the state treasurer for credit to the ~~{fund}~~ **account** for the management of hazardous waste.

Sec. 6. NAC 444.846 is hereby amended to read as follows:

444.846 1. The operator of a facility for the management of hazardous waste that is owned by the State of Nevada shall, in addition to any other applicable fees, pay to the division of environmental protection of the state department of conservation and natural resources a fee of 25 cents per cubic foot of the volume of all hazardous waste received at the facility.

2. The operator of such a facility shall pay the fee provided in subsection 1, based upon the volume of hazardous waste received by the facility during each quarter of the calendar year, within 30 days after the end of each quarter.

3. The division of environmental protection may assess and collect a penalty of 2 percent of the unpaid balance for each month, or portion thereof, that the fee remains due.

4. The division of environmental protection shall:

(a) Deposit the money received pursuant to this section in the ~~{fund}~~ **account** for the management of hazardous waste created pursuant to NRS 459.530;

(b) Account for the money received pursuant to this section separately; and

(c) Use the money for the cost of closure and perpetual care of the facility.

Sec. 7. NAC 444.850 is hereby amended to read as follows:

444.850 As used in NAC 444.850 to 444.8746, inclusive, unless the context otherwise requires:

1. The words and terms defined in NAC 444.8505 to 444.861, inclusive, have the meanings ascribed to them in those sections.

2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.861, inclusive, the words and terms defined in 40 C.F.R. § 260.10, as that section existed on July ~~{1, 1998,}~~ **6, 1999**, have the meanings ascribed to them in that section.

Sec. 8. NAC 444.8632 is hereby amended to read as follows:

444.8632 1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, a person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil shall comply with all applicable requirements of, and may rely upon applicable exclusions or exemptions under 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, and Parts 273 and Part 279, as those provisions existed on July ~~{1, 1998,}~~ **6, 1999**, which, except as *otherwise* modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The state environmental commission may use federal statutes and regulations that are cited in 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, and Part 273 and Part 279, to interpret these sections and parts.

2. The volumes containing these parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250, for the following prices:

- | | |
|--|-------------------------------|
| (a) Volume 40 C.F.R. Part 2..... | {\$31} \$33 |
| (b) Volume 40 C.F.R. Part 124 | {40} 53 |
| (c) Volume 40 C.F.R. Parts 260 to 265, inclusive | {29} 32 |
| (d) Volume 40 C.F.R. Parts 266 to 299, inclusive | {29} 33 |

Sec. 9. NAC 444.8634 is hereby amended to read as follows:

444.8634 1. Any reference to the following terms in 40 C.F.R. Part 2, Subpart A, shall be deemed to have the meanings ascribed thereto in this section:

(a) "District court of the United States" or "Federal district court" shall be deemed to mean "district court in Nevada";

(b) "Federal agency" shall be deemed to mean "state agency";

(c) Except in section 2.118(a), "Freedom of Information Act," "FOIA," the "Act" or "5 U.S.C. 552" shall be deemed to mean "NRS 459.555 and any regulations adopted pursuant thereto";

(d) "Freedom of information officer" shall be deemed to mean the "administrator of the division or his designee";

(e) "General counsel" shall be deemed to mean the "attorney general of Nevada";

(f) Any addresses shall be deemed to mean the "Division of Environmental Protection, 333 W. Nye Lane, ~~{Capitol Complex,} Room 138~~, Carson City, Nevada ~~{89710";} 89706-0851";~~

(g) Any references to the employment rankings of "GS-8" or "GS-9" shall be deemed to mean, respectively, "grade 31" and "grade 32" of the Nevada personnel system established pursuant to NRS 284.170, and any reference to a fee for the cost of staff time shall be deemed to mean, respectively, \$15 and \$22.50 per half hour;

(h) Any references to duplication or reproduction charges of "\$0.15 per page" shall be deemed to mean "10 cents per page"; and

(i) Any reference to an officer except the general counsel shall be deemed to mean the "administrator of the division."

2. Fees required to be paid to the "U.S. Environmental Protection Agency" or the "United States Environmental Protection Agency" pursuant to section 2.120 of 40 C.F.R. Part 2 must be paid to the "State of Nevada" and deposited in the ~~{fund}~~ **account** for the management of hazardous waste.

Sec. 10. NAC 444.8764 is hereby amended to read as follows:

444.8764 1. "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

2. The term includes any:

(a) Hazardous waste or constituent of hazardous waste which is subject to regulation under 40 C.F.R. Part 261;

(b) ~~{Mixture of wastes from commercial chemical products identified in 40 C.F.R. Part 261.33, which have been discarded or are intended to be discarded, if at least 10 percent of the mixture, by volume, is composed of one or more of its active ingredients;~~

~~{(e)}~~ Waste containing polychlorinated biphenyl; and

~~{(d)}~~ (c) Waste brought into this state which is designated as hazardous waste in the state of its origin.

Sec. 11. NAC 444.8841 is hereby amended to read as follows:

444.8841 1. "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

2. The term includes any:

(a) Hazardous waste or constituent of hazardous waste which is subject to regulation under 40 C.F.R. Part 261 ~~{,as that part existed on October 3, 1996;~~

~~(b) Mixture of wastes from commercial chemical products identified in 40 C.F.R. Part 261.33, as that part existed on October 3, 1996, which has been discarded or is intended to be discarded, if at least 10 percent of the mixture, by volume, is composed of one or more of its active~~

~~ingredients; and~~
~~(e)}~~; and

(b) Waste brought into this state which is designated as hazardous waste in the state of its origin.

3. The term does not include waste containing polychlorinated biphenyl, unless it is mixed with hazardous waste.

Sec. 12. NAC 444.9452 is hereby amended to read as follows:

444.9452 1. All sections, subparts and parts of Title 40 of the Code of Federal Regulations referred to in NAC 444.940 to 444.9555, inclusive, as modified by NAC 444.9453, are hereby adopted by reference as they existed on July ~~1, 1998.~~ **6, 1999.**

2. The volumes containing these sections, subparts and parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250, for the following prices:

- (a) The volume containing 40 C.F.R. Parts 260 to 265, inclusive.....~~129~~ **32**
- (b) The volume containing 40 C.F.R. Parts 266 to 299, inclusive.....~~29~~ **33**
- (c) The volume containing 40 C.F.R. Part 761~~38~~ **42**

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